IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5747 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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IMRAN MOHAMAD USMAN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5747 of 2002

MR JB DASTOOR for Petitioner No. 1

MR H H PATEL AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/08/2002

ORAL JUDGEMENT

#. By this petition under Article 226 of the Constitution of India the petitioner detenu has challenged the legality and validity of the order of detention dated 303.2002 passed against him by the Police

Commissioner, Ahmedabad City, Ahmedabad in exercise of the powers conferred on him by section 3(2) the Gujarat Prevention of Anti-Social Activities Act 1985 (hereinafter referred to as the PASA Act).

#. Heard Mr. J.B.Dastur learned counsel for the petitioner and Mr. H.H.Patel learned AGP for the respondents.

#. Along with the order of detention the petitioner was served with the grounds of detention.

#. The detaining authority while recording subjective satisfaction has considered the fact of registration of 2 different criminal cases registered with Danilimda Police Station Vide CR No. 43 of 2002 and 48 of 2002. Both these offences have been registered on 17.3.2002 for the offence punishable under sections 143, 147, 148, 149, 336, and 436 of IPC and section 135(1) of Bombay Police Act. In the first offence registered against the petitioner , he has also committed the offence punishable under section 25(1)-D of the Arms Act and under sections 3 and 7 of the Explosives Act. The police had seized locally made hand bombs during investigation of both these offences in a communal conflict after the Godhra incident.

#. The petitioner has not been named in the FIR in the first offence registered with Danilimda police station but he was identified by some witnesses and has been named in the FIR in CR No. 48 of 2002. He was arrested by the police for both these offences on 18.3.2002. The detaining authority has also considered the statements of two witnesses while exercising power vested in him under section 3 of PASA Act.

#. It seems that with a view to get the deterrent effect in the area where the incident of communal conflict between the two groups had occurred, the order of detention was passed by way of preventive measure. It is submitted by Mr. Dastur that on receipt of the representation, the State Government could have revoked the impugned order of detention as at that time there was practically normalcy in the area.

#. Mr. Dastur learned counsel appearing for the petitioner has taken me through the entire memo of petition and the order of detention is challenged on

number of grounds. However, learned counsel for the petitioner has concentrated his arguments mainly on two grounds. The first point argued by learned counsel Mr. Dastur is that the order under challenge has been passed mechanically as the sponsoring authority has placed papers mainly based on criminal cases registered against the petitioner. The second point argued by learned counsel for the petitioner is that the petitioner has no criminal antecedents prior to the date of offence and the cases registered against the petitioner being a solitary type of case he could not have been branded as "dangerous person" Statements of two witnesses have been mechanically recorded and there is nothing in the statement of two un-named witnesses that the activities of the petitioner was a challenge to the maintenance of the "public order" Of course, in the alleged incidents occurred on 3.4.2002 huge loss and damage to the properties was caused but there was a big mob on account of the incidents of communal conflicts. It is rightly argued that the detaining authority ought not to have recorded satisfaction that the petitioner requires to be detained and his free movement may prejudice or disrupt the "public order" It is true that for a single offence or a dangerous act, a person can be detained. However, it is obligatory on the part of the detaining authority to get satisfied that unless the detention order is not passed, detenu would indulge in similar type of dangerous activities which would disrupt the "public order" It is submitted by learned counsel for the petitioner that after appreciating the papers of the police case, prima facie, registered against the petitioner, the competent court has granted bail to the petitioner. When the criminal court has accepted that discretion requires to be exercised and petitioner should be granted bail, then it would not be otherwise justified or proper to keep the petitioner in prison under the detention laws unless it is satisfactorily accepted that but for the preventive detention. he/she would continue to indulge in similar activities prejudicial to the " public order" Gravity of the offence as well as development of normally in the area where alleged incident had occurred are both relevant facts. It is rightly submitted that this is the case wherein State of Gujarat should have revoked the order of detention after lapse of certain period from the alleged sole incident. For short, the continued detention of the petitioner in reference to the above set of facts, is bad and illegal and so on both these counts the continued detention of the detenu requires to be held as bad in law and illegal.

8.1. While enlarging the arguments on the point of "an

act prejudicial to the public order" Mr. Dastur has submitted that this particular alleged wrong should not be treated as an activity prejudicial to the maintenance of "public order" Of course when the incident had occurred, it must have been affected adversely to even the tempo of life in that area and as an effort to achieve normalcy in the affected area, some drastic measures might have been thought over immediately but at least on the date of detention i.e. 10.4.2002 the situation was very much under control and there was no need to exercise the powers under Section 3 of the PASA Act.

8.2 The incident was a group clash and the result of mob psychology. The petitioner was, on the contrary a victim of the situation where two different rival groups were pelting stones etc. against each other. Innocent police personnel had also sustained injuries. For the sake of arguments, it is accepted that the petitioner was present and even was found active than also on the strength of the solitary type of incidents, impugned order of detention could not have been passed. To have control over the situation, even if such order is passed, it could not have been continued beyond the date of representation. Revocation normally should follow in such cases by opting for less drastic measures. The State Government is supposed to review the situation and the order of detention in a typical social situation.

9. Mr. H.H.Patel learned AGP has pointed out that in one of the decisions the Apex Court has said that to inflict a knife injury is a criminal wrong but in a communal disturbance stabbing a person may result into disruption in the normalcy and the same may give further rise in the flaring up the communal conflicts. So, the authority while passing the order was justified and the subjective satisfaction recorded by the authority is appropriate and in accordance with the provisions of the PASA Act. Mr. Patel has referred the relevant provisions of sub section (4) of Section 3 of the PASA Act in reference to section 2(c) of the PASA Act.

10.1 The say of the learned counsel Mr. Dastur if evaluated in the correct perspective the detaining authority ought to have considered the representation made by the petitioner. When the petitioner has prayed for revocation of the order of detention, then the authority is supposed to consider the representation in totality of facts and circumstances of the case. The petitioner had initially applied for revocation of the order by making a written representation on 10.4.2002 but

the same was rejected by the State Government.

10.2 This court while dealing with Special Civil Application No. 5177 of 2002 has considered certain aspects and it would be appropriate to refer relevant part of the observations made by this Court in the oral judgment dated 23.7.2002 while dealing with aforesaid petition, wherein this court has observed that:

> "It is rightly argued that detaining authority ought to have recorded satisfaction that the petitioner requires to be detained and his free movement may prejudice or disrupt the "public order" It is true that for a single offence or a dangerous act, a person can be detained. However, it is obligatory on the part of the detaining authority to get satisfied that unless the detention order is not passed, the detenu would indulge in similar type of dangerous activities which would disrupt the " public order" It is submitted by learned counsel for the petitioner that after appreciating the papers of the police case, prima facie, registered against the petitioner, the competent court has granted bail to the petitioner. When the Criminal Court has accepted that discretion requires to be exercised and petitioner should be granted bail then it would not be otherwise justified or proper to keep the petitioner in prison under the detention laws. Gravity of the offence as swell as development of normalcy in the area where alleged incident had occurred, are both relevant facts. It is rightly submitted that this is the case wherein State of Gujarat should have revoked the order of detention after lapse of certain period from the alleged sole incident. For short, this court feels that the continued detention of the petitioner in reference to the above set of facts, is bad and illegal and so on both these counts, the continued detention of the detenu requires to be held as bad in law and illegal."

11.1. Learned AGP Mr. Patel while resisting the petition has submitted that in view of the ratio of the decision of this Court in the case Smt. Sohanbibi Mohommadkhan vs. State of Gujarat 1990 (2) GLH 1, the order of the detention should be held valid. In the cited decision the petitioner lady was found involved in the activities of bootlegging and she had challenged the

legality and validity of the order of detention. Reliance is placed on the observations made by the Division Bench in para 16 of the decision wherein the Court has held that the subjective satisfaction arrived at by the detaining authority under Section 3 and under Section 9(2) of the PASA Act, requires to be appreciated on factual matrix of each case. In the cited decision, names of witnesses were not disclosed due to possibility of flaiming up of communal riots. Satisfaction recorded by the authority and the reasons assigned for recording the subjective satisfaction was found valid. This decision would not help the State in any manner because the same is based on totally different set of facts.

11.2. The second decision relied on by the learned AGP Mr. Patel is in the case of Indersing Gulabsing Shaikh vs. State of Gujarat 1993 (2) GCD 842 (Guj.). In the cited case the detenu was found involved in the offence punishable under the Arms Act and said to have been indulged in violent activities constituting disturbance to the "public order" The petitioner detenu was found involved in 9 different cases as well as 4 different un-named persons have given their statements describing the activities of the petitioner and the detaining authority satisfied that the petitioner is a "dangerous person" Observations of this Court in reference to the arguments advanced by the learned counsel appearing in the matter in para 9 of the cited decision has been read over to the court , wherein the Court has held that there are various categories of anti-social elements described in Section 3 of the PASA Act viz. dangerous person, bootlegger,persons indulged in immoral traffic and property grabbers and on facts , the Court found that the petitioner Indersing is a " dangerous person. While in the present case, the petitioner is found involved in criminal case of communal violence and has no other criminal antecedents. So this decision also would not help the respondent. Third decision relied upon by Mr. H.H.Patel learned AGP is in the case of Dilip Ratilal Ode vs. Commissioner of Police, Rajkot City & ors. reported in 1999(2) GLR 1605 . In this case inspite of externment order the petitioner continued to commit anti social activities prejudicial to the public order. So this case also will not help the respondent.

12. In view of the representation made by the petitioner himself through his counsel, there was an ample opportun ity for the detaining authority to revoke the order of detention at any subsequent stage especially when it is claimed that there is normalcy in the city and in that case continued detention of the petitioner is not

warranted, otherwise reasons could have been assigned justifying the continuance of the detention. It is time and again said in more than one decision by the Apex Court that it is the duty of the detaining authority to consider the aspect of the revocation of the order of detention if prayed or in changed circumstances. The petitioner has voluntarily declared before this Court by filing a written undertakings and the learned counsel for the petitioner has also made a statement before the Court that in the interest of smooth administration of the area by the police machinery, detenu shall not enter the areas falling under Kagdapith and Danilimda Police Stations for a period of two months.

12.1. Normally while dealing with the petitions seeking relief of quashing of the order of detention and when the writ of habeas corpus is prayed for the Court itself, unless in exceptional circumstances should not impose any such restrictive conditions but when the petitioner himself has voluntarily submitted an undertaking through the Jail Authorities of Junagadh Jail to the effect that he shall not enter the areas of Kagdapith as well as Danilimda Police Stations of Ahmedabad City for a period of two months then with a view to do substantive justice the undertaking filed by the detenu can be accepted. So the same is accepted accordingly. The petitioner now shall be bound by the undertaking filed by him only with a view to help the police machinery in the areas of Kagdapith and Danilimda Police Stations of Ahmedabad City. It is clarified that the continued detention is required to be quashed on its own merits and not on account of this undertaking filed by the petitioner. On such an undertaking the order of detention cannot be turned down. So in the changed circumstances, the court feels that this petition should be allowed. The fact of filing undertaking and imposition of restriction on the movement of the petitioner invited by the petitioner, in any way, should not be treated as a precedent and neither party before the court in another such or similar petition shall be entitled to take the advantage or disadvantage of these findings/conclusions.

13. It is submitted that considering the number of events of communal riots where many citizens have sustained physical injuries as swell as suffered property loss and in that set of circumstances the authority might have thought it fit to detain certain number of persons even innocent but after establishment of normalcy the order of revocation could have been passed by the authority on the representation. So, this is a case where without disturbing the validity of the order of

detention, continued detention can be quashed or turned down and the petitioner should be set at liberty.

14. In the circumstances the say of Mr. Dastur learned counsel is accepted that in the present case the continued detention of the petitioner is required to be quashed.

15. The voluntary undertaking of the petitioner detenu sent through the Jail Authorities of Junagadh Jail, Junagadh which has been tendered by the learned counsel appearing for the petitioner dated 6.8.2002 is taken on record. The learned AGP has rightly pointed out that the petitioner has to get his presence marked with Danilimda Police Station in compliance of the order of bail passed in his favour. So the petitioner will have to get the condition of bail duly modified for a temporary period of two months and for a period of two months he will have to get his presence marked with Danilimda Police Station.

16. For the reasons mentioned above, the petition is allowed to the extent that the continued detention of the detenu pursuant to the impugned order of detention dated 30.3.2002 passed by the Police Commissioner, Ahmedabad City, Ahmedabad against the detenu is hereby quashed and set aside. The petitioner detenu Imram Mohmed Usman Shaikh is ordered to be set at liberty forthwith if he is not required to be detained in any other cases. Rules is made absolute accordingly. Direct Service.

(C.K.Buch-J)

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